



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148364

PRELIMINARY RECITALS

Pursuant to a petition filed March 27, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated petitioner's FS for failing to return her six-month review form (SMRF).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lee Yang
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been receiving FS. As part of her responsibilities for receiving FS, she was required to submit a six-month report form (SMRF) by the end of February 2013. The SMRF is used to alleviate the six-month in-person review for FS. On December 24, 2012 the agency

issued a reminder letter to petitioner stating that her SMRF was coming due and would be sent to her in the mail. See Exhibit 1.

3. The agency sent the SMRF to petitioner on January 21, 2013. It advised her that she could return the form by 2/5/13 to avoid a delay in benefits.
4. Petitioner did not return the SMRF to the agency.
5. On February 18, 2013 the agency sent petitioner a negative notice stating that her FS would end March 1, 2013 because the SMRF was not received.

DISCUSSION

Food units certified for 12 months for FS are required to submit a six-month report form (SMRF) in the sixth month of the certification period. *FS Handbook*, §2.2.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. To be considered timely, a SMRF must be returned to the local agency by the 5th day of the process month (month 6) or no later than the end of the process month. *Id.* at §6.1.2 If a household fails to return a timely SMRF, FS will close effective the last day of the process month at adverse action. *Id.* at §6.1.2.

Petitioner agreed at hearing that she did not submit the SMRF because she was confused about the process; she had received an overpayment notice as well that made her believe she didn't need to complete the SMRF. There is no exception to this SMRF process, even if she was confused. The notices were clear that she needed to complete the SMRF and if she had questions about that as it relates to the overpayment issue, she could have contacted the agency to resolve her questions. Based on the evidence before me, I must find that the agency met its burden to show that it correctly denied petitioner's FS effective March 1, 2013. Petitioner is urged to pay close attention to her notices in the future.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency properly terminated petitioner's FS effective March 1, 2013 for failing to return her six-month review form (SMRF).

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of May, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 23, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability